

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 November 2011

**Public Authority:** Wandsworth Council  
**Address:** Town Hall  
Wandsworth High Street  
London  
SW18 2PU

#### Decision

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1. The complainant requested information about parking enforcement policies at Wandsworth Council ('the council')
2. The Commissioner's decision is that the council was entitled to refuse the requests under section 14(1) of the FOIA on the grounds that they were vexatious. He does not require the council to take any further action.

#### Background

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3. In June 2010, the complainant's wife was issued with a Penalty Charge Notice (PCN). The complainant then made representations against the PCN to the council. The complainant was informed that the matter had been placed upon hold whilst these representations were considered. However, due to an administrative error the PCN was not put "on hold", and an escalated charge certificate was sent to the complainant's wife. Throughout there has been debate between the complainant and the council regarding whether the vehicle was parked in contravention of any regulations – particularly about whether the road it was parked on was a carriageway or a footpath. After exhausting the council's internal procedures, the complainant lodged an appeal with the Parking and Traffic Appeal Service (PATAS). The council maintains that the vehicle was parked incorrectly and that the ticket was issued lawfully. However, the council accepted that there was a procedural error and so the ticket was cancelled in September 2010 before the appeal was heard by PATAS.

## Request and response

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4. On 28 February 2011, the complainant requested  
“...all parking-related bonus schemes operating in Wandsworth”.<sup>1</sup>
5. The council responded to this request on 28 March 2011 and applied the exclusion at section 14(1) of the FOIA on the basis that it considered that the request was vexatious. The complainant requested an internal review and the council responded on 16 June 2011. The internal review upheld the council’s initial response.
6. On 2 March 2011, the complainant requested the following information:  
“...full disclosure of Wandsworth’s contract with NSL...Was my PCN issued by an NSL operative? Does NSL pay target bonuses to Wandsworth as part of its contract? Are you setting targets for NSL to meet?”<sup>2</sup>
7. The council responded to this request on 30 March 2011 and applied the exclusion at section 14(1) of the FOIA. The complainant requested an internal review and the council responded on 8 July 2011. The internal review upheld the council’s initial response.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The council has applied section 14 to both of these requests for the same reasons and relies on the same submissions to the Commissioner to explain why it believes both requests are vexatious. The Commissioner has therefore addressed both complaints in this decision notice. He has investigated whether the council was entitled to refuse to comply with the requests under section 14(1) of the FOIA.

## Reasons for decision

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9. Section 14(1) of the Act provides that:  
“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

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<sup>1</sup> This request is the subject of complaint reference number FS50400972

<sup>2</sup> This request is the subject of complaint reference number FS50397482

10. The Commissioner's approach to what constitutes a vexatious request is outlined in his guidance '[Vexatious or repeated requests](#)'. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:
- it would create a significant burden in terms of expense and distraction;
  - it is designed to cause disruption or annoyance;
  - it has the effect of harassing the public authority;
  - it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
  - it clearly does not have any serious purpose or value.
11. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Information Tribunal upheld this approach in [Rigby v Information Commissioner and Blackpool, Fylde and Wyre Hospitals NHS Trust](#) (EA/2009/0103), commenting that:
- "it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context"  
(para 40)
- The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14 to be engaged.
12. When investigating a public authority's application of section 14(1), the Commissioner is also mindful of the Tribunal's decision in [Hossak v the Information Commissioner](#) (EA/2007/0024). In that case, the Tribunal commented on the consequences of finding a request vexatious. It accepted that these are not as serious as those of determining vexatious conduct in other contexts and consequently, the threshold for vexatious requests need not be set too high.
13. In determining whether section 14 was applied correctly, the Commissioner has considered the evidence provided by the council and the complainant under each of the above headings, and the context and history of correspondence and contact up until the date of the request.

*Would complying with the requests create a significant burden in terms of expense and distraction?*

14. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.

15. The Commissioner notes that the council has previously refused two of the complainant's requests about parking related matters under section 12 of the FOIA. These refusals were the subject of complaint to the Commissioner. Although these cases were resolved informally, the Commissioner accepted that the council had demonstrated that the aggregated costs of complying with two of the complainant's previous requests alone had exceeded the appropriate limit of 18 hours. The Commissioner is consequently satisfied that the council has spent a significant amount of time dealing with the complainant's requests on this matter and to continue would create a significant burden.
16. The Commissioner notes that when the council has in the past responded to the complainant's requests, this has elicited further requests and challenges against the information provided. In several cases this is because the complainant simply does not accept the veracity of the information disclosed to him. For example, the complainant requested "all records where you have issued 'frighteners' and collected escalated charge notices issued illegally inside 28 days". In response, the council determined that over the course of a year, there were 98 cases where a letter relating to a PCN had been received after the Notice to Owner was issued and prior to the issue of a Charge Certificate. It manually reviewed all of these cases and established that a charge certificate was sent before the 28 day period for payment or appeal had elapsed in only one instance. This was the complainant's case, where the council had explained the error and apologised for it.
17. The complainant however refuses to accept that this information is accurate. He has stated in various letters that such a claim is "absurd" and "outrageous". This disclosure has led to further requests, as the complainant simply does not accept the veracity of the information provided, even when the council has confirmed in subsequent communications that it is accurate. For example, on 5 November 2010, the complainant asked that the council

"...define the criteria...you would easily be able to control the 'data extract' to come up with a favourable sample...Obviously I will want to see all records where a context has been made in a consecutive sample, properly sourced. You could just as easily come up with 98 records which fail regulations".

In a letter of 25 November 2010, the complainant again reiterates his belief that the information provided does not comply with the request writing "let me remind you of my specific request...this is not asking you to show me what you have done within statutory requirements, but to find what has been done illegally!". The complainant resubmitted this request on 7 December 2010, stating that "the FOI information continues to be withheld". In an email of 10 December 2010, the complainant again resubmitted his request stating that the previous

response was inaccurate but instead "...carefully selected records of valid charges notices...you well know it was not what I specifically asked for!" In the same email the complainant identifies 13 individual members of council staff who he accuses of "cherry-picking" information in various responses to him.

18. In a response to an email from the council applying section 14, the complainant himself acknowledges that he does not accept much of the information provided to him, stating that "...it's no wonder I give little credence to the explanations of the council, when all I find is endemic connivance, misrepresentation and avoidance..."
19. The Commissioner notes that the complainant does not accept that much of the information provided to him is accurate or representative, because it does not support his view that the council systemically extorts money from car owners. It therefore seems likely that the complainant will continue to submit requests in the hopes of uncovering evidence to support his theories.
20. The Commissioner understands that the complainant's viewpoint is that he has been forced to submit multiple requests for information in order to try to uncover systematic failures and corruption around the issuing and administration of PCNs. The Commissioner would however observe that the FOIA is not the correct vehicle for pursuing grievances and campaigns against a public authority. The complainant does not accept this. For example, in response to a letter from the council explaining that it had applied section 12 to one of his requests, the complainant stated that "as information is forced from you and the layers of malpractice are peeled away, further questions will inevitably be asked and information demanded, irrespective of 'aggregation'". The Commissioner therefore believes that it is reasonable to anticipate that the complainant will continue to submit requests for information regarding this matter.
21. In this context, the Commissioner considers that given the significant number of previous requests, compliance with the requests under consideration would create a significant burden in terms of expense and distraction. He further notes that a response from the council to the requests is unlikely to satisfy the complainant and it is probable that it will instead generate further requests and complaints.

*Could the requests fairly be categorised as obsessive?*

22. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? The Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

23. The Commissioner notes that the complainant appears to be pursuing these requests in order to uncover what he believes to be systemic corruption around the issuing of PCNs. Whilst the Commissioner cannot investigate on parking issues, he understands that the complainant was unhappy about the circumstances of the issue of this particular PCN, and about the council's erroneous issuing of a escalated charge notice. Whilst the Commissioner makes no comment on the validity or otherwise of the original ticket, he accepts that initially, it was reasonable that the complainant should wish to seek further information about the PCN system. He also notes that the council initially appeared to agree with this viewpoint and sought to address the complainant's requests thoroughly.
24. However, the Commissioner is mindful of the comments of the Tribunal in [Coggins v Information Commissioner](#) (EA/2007/0130). In this case the complainant was motivated by a desire to uncover a potential fraud. The Tribunal accepted that agenda "...amounted to a serious and proper purpose..." (para 22). However the Tribunal also found that

"...there came a point when the Appellant should have let the matter drop...there had been three independent enquiries...in the Tribunal's view [the complainant] was not justified in the circumstances to persist with his campaign." (para 25).

The Commissioner understands that the complainant's complaint around the issue of the PCN has been investigated at each level of the council's three stage complaint process. The council has accepted that the escalated charge notice should not have been sent. It explained why this had occurred and apologised for the error. The complainant has also complained to the LGO, who stated that whilst it could not consider whether the PCN was issued correctly, it "had not received any evidence to suggest that the council treated the complainant unfairly...the council has responded substantively to the complainant's concerns".

25. The council argues that the complainant has become fixated on a number of issues and has continued to pursue these throughout his requests and complaints. For example, the complainant was advised in July 2010 that when the PCN was issued to his wife, her vehicle was parked on a "footway crossover". Prior to the council issuing the first section 14 refusal notice, the complainant had sent ten separate emails or letters to the council disputing that the area was in fact a footway

crossover. He has submitted a request to see the original planning applications for the adjacent building. The council has responded to the complainant and provided further explanations of why it considers the area to be a footway crossover. The complainant accepts none of these and maintains throughout his various correspondences that the area is in fact part of the road carriageway.

26. The Commissioner understands that the complainant does not accept the council's position regarding the status of the area. In a letter of 18 November 2010, the complainant writes:

"IT IS AND HAS ALWAYS BEEN A CARRIAGEWAY ENTRANCE... now you try to perpetuate the 'footway' deceit. You may seek to 'agree to differ' on this point. You cannot. It is a matter of statutory law. Issuing PCNs [at the location] is patently unlawful. Attempting to extort escalating charges, to mind, warrants a criminal investigation of all involved".

It is outside of the Commissioner's remit to make any investigation into or comment on the status of the area where the vehicle was parked. However he does consider that the council's position has been made clear to the complainant on several occasions. However, given that the council's position on his point is clear and has been repeatedly explained to the complainant, the Commissioner considers that it is indicative of obsessive behaviour for the complainant to continuing pursuing this point through requests and complaints some seven months later.

27. Whilst the complainant may disagree with the council's parking policies, the Commissioner's view is that the FOIA is not the correct forum for pursuing these issues. The council has provided the Commissioner with full copies of its correspondence with the complainant. The Commissioner notes that prior to the council issuing its first vexatious refusal notice, it had received some 36 letters and emails from the complainant about his PCN and FOI requests within seven months. These included 26 separate requests for information. These have mushroomed to include requests for information about the complainant's own PCN, about PCN policy and enforcement generally, about the specific circumstances of previous PCNs, and about various members of staff that have been involved in the complainant's PCN dispute or with his FOI requests. The Commissioner believes that the submission of requests at this frequency is evidence of obsessive behaviour.

*Did the requests have the effect of harassing the council?*

28. This factor takes into account the effect a request has had on a public authority, regardless of the requestor's intention. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.

29. The Commissioner notes that the complainant has, at various points throughout his lengthy correspondence with the Council, levied criticisms of individual officers. For example, in a letter of 28 February 2011, the complainant variously described council officers as "callous", "bullying", and "unscrupulous and unconstrained". He described the actions of these officers as "cynical and calculating" and "conniving to perpetuate the falsehoods of representation to me".
30. In a letter of 28 September 2010, the complainant discusses the error whereby the council sent an escalated charge notice although it had already agreed that the PCN would be placed upon hold. The complainant describes this as "illegal, bully boy activity", "seemingly systemic corruption", "a saga of irregularity and threat". He states that the council officer who decided to cancel the PCN was responsible for letters that were "designed to mislead, confuse and scare", and contends that "your conduct has been an utter disgrace to the public office you hold".
31. The Commissioner notes that the council had explained that an administrative error had led to the escalated charge notice being sent and apologised for this. Despite this, the complainant continued to accuse the council of deliberate and widespread extortion. In an email of 7 October, the complainant alleged "...governance by strong arm, bully boy tactics – this could be serious malpractice". In a letter of 9 October 2010, the complainant suggests that as part of the stage 3 investigation proposed by the council, it should look at "the many issues of concern that would seem to be evident... impropriety, misinformation, extortion, malpractice, connivance and bullying". In a letter of 25 November 2010, the complainant confirms that he is concerned that "there is clearly systematic extortion" within the council. On 28 February 2011, following the final investigations into the PCN, the complainant accused the investigating officer of "...patent determination to defend unscrupulous and unconstrained wardens and complicit officers".
32. The Commissioner notes that comments of this nature are typical of the complainant's correspondence and indicative of his attitude towards the council and its employees. The Commissioner has seen multiple incidences of the complainant accusing the council of fraud throughout his correspondence.
33. The Commissioner also observes that where the council has provided information, the complainant has interpreted this as an admission of misconduct by its staff. For example, the council explained that sending an escalated charge notice when the case had been placed upon hold was incorrect. It described this as "procedural impropriety" and explained that this was why it had cancelled the PCN. In a letter of 9 October 2010, the complainant acknowledged the council's statement



that the PCN was cancelled due to a procedural impropriety. He then stated that this was:

“...a vindication of my many contentions that malpractice would seem to be an endemic culture at Wandsworth...”

The complainant has also repeatedly stated that this constitutes an admission of “improper behaviour” by the council’s staff and has submitted FOI requests for the identity of members of staff that have “behaved improperly” towards him and his wife. The council explained to the complainant that it did not accept that the terms “procedural impropriety” and “improper behaviour” were synonymous, instead explaining that the charges notice was sent as a result of “human error”. On 10 December, the complainant accused the council of behaving “shamelessly and absurdly” by using the term “human error” since it had “already recorded instances of improper behaviour”. The complainant refuses to accept that the certificate was sent as an error and accuses the council of “deliberate impropriety, illegality and extortion”.

34. The Commissioner notes that the complainant alleges that many members of the council’s staff are in fact employees of the council’s parking contractor “masquerading” as council employees. This appears to be because they have provided information which does not support the complainant’s hypothesis that malpractice is endemic throughout the council.
35. The Commissioner believes that it is reasonable that the council’s staff would feel harassed by the complainant’s repeated accusations of corruption and impropriety, especially given that these often make direct reference to particular members of staff. The Commissioner also notes that the complainant has copied emails accusing the council of impropriety to a wide audience, including various MPs.
36. The Commissioner’s view is that public authorities should expect to be accountable for their actions as they are funded by public resources. He endorses the comments of the Tribunal in Jacobs v Information Commissioner (EA/2010/0041), which found that:

“Public authorities and the individuals representing them must expect to be exposed to an element of robust and persistent questioning, sometimes articulated in fairly critical tones”
37. However, the Commissioner has considered the length of time that the council has been dealing with the complainant’s requests, the nature and phrasing of the enquiries, and the way that the complainant chooses to interpret and use the information he obtains. The Commissioner’s view is that in this case, the culmination of criticisms and complaints

levied at the council in relation to PCNs and their enforcement would have the effect of harassing the public authority. This is particularly the case where the complainant makes serious allegations of criminal activities and deliberate malpractice against the council and its officers.

*Are the requests designed to cause disruption or annoyance?*

38. The Commissioner accepts, as discussed above, that these requests created disruption and annoyance for the council. However, the Commissioner will consider when assessing this factor whether a requestor intended to cause disruption or whether the requests were designed to do so.
39. The Commissioner accepts that the complainant's primary purpose was to uncover information to support his theory that the council has acted improperly in relation to both his own PCN and regarding parking policy and enforcement more generally. However, as in decision notice [FS50321319](#), the Commissioner makes a distinction between cases where disruption or annoyance is the intended cause of a campaign, and cases where these are a potentially anticipated side effect. The Commissioner doubts that the complainant would be unaware that his requests would cause annoyance to council staff, given accusatory tone employed throughout the requests. This is particularly the case since the council advised the complainant on 8 December 2010 that given the context and history of his requests, it would begin to consider whether his requests were vexatious. The council also identified examples of the accusations against individual staff members that it found unacceptable. Nevertheless the complainant continued to submit requests for information containing similar accusations. In a letter of 10 December 2010, the complainant states

"...I don't doubt you find my requests vexatious. It must be very annoying to find someone pursuing truth. It must be extremely annoying for you to be questioned about improper conduct, illegality and extortion".

The complainant made a similar statement in an email of 22 March 2011, commenting that "I'm sure you find them [the requests] vexatious, but they are all in the public interest".

40. The Commissioner therefore considers that whilst the complainant was motivated by a genuine desire to obtain information about PCNs, he was also aware that the effect of his requests would be to cause disruption and annoyance to the council. Consequently the Commissioner has given a small amount of weight to this factor.

*Do the requests lack any serious purpose or value?*

41. Whether a request has value is not usually of significance given that the FOIA is not concerned with the motives of a requester, but rather with openness and transparency through the disclosure of information. However, the Commissioner acknowledges that should any authority be able to show that a request has no serious purpose or value, this may contribute to the justification for applying section 14(1).
42. The complainant wrote to the Commissioner on 7 October 2011, stressing that his aim was to make public bodies more open and accountable. He emphasised that he needed disclosure in order to make a "*proper enquiry into systemic practices*". The Commissioner accepts that it is the complainant's belief that he is championing other motorists and that he has genuine concerns over the council's actions relating to the issuing of PCNs and their enforcement, although he makes no comment as to whether there is any validity in these concerns. He is therefore reluctant to conclude that there was no purpose or value in any of the complainant's requests, although he does not accept that the FOIA is the correct medium for the complainant to pursue these concerns.

### *Conclusion*

43. The Commissioner recognises that the complainant has genuine concerns about the practices regarding PCNs and their enforcement. However, he believes that the council has demonstrated that the current requests are unreasonable. This is because the requests have been submitted at a level that indicates obsessive behaviour, and seek to reopen issues that have already been substantively addressed. This pattern of behaviour has continued despite the council explaining to the complainant that it considered some of his correspondence unreasonable. The complainant's ongoing requests and communications also make consistent criticisms of members of staff and accuse both them and the council of immoral and illegal activity. The Commissioner does not accept that this is an appropriate use of the FOIA, especially as the complainant's objections have been addressed by the council and other bodies. Having considered all of the above, the Commissioner believes that section 14(1) of the FOIA was correctly applied in this case.

## Right of Appeal

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44. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

45. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
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